UNITED STATES *v.* FERGER ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 776. Argued April 29, 1919.—Decided June 2, 1919.

Under the commerce clause, Congress has power to deal with acts not in themselves interstate commerce but which obstruct or otherwise injuriously affect it. P. 202.

Bills of lading in interstate commerce are instrumentalities of that commerce, subject to the authority of Congress under the commerce clause. P. 204.

Judicial notice will be taken of the importance of bills of lading in interstate commerce. *Id.*

Congress has power to prohibit and punish the forgery and utterance of bills of lading for fictitious shipments in interstate commerce, as a means of protecting and sustaining that commerce. P. 205.

256 Fed. Rep. 388, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Brown, with whom *Mr. Charles H. Weston* was on the brief, for the United States.

merce, so it must be, if the authority to regulate is not to be denied, that the right to exert such authority for the purpose of guarding against the injury which would result from the making and use of spurious imitations of the instrumentality must be equally extensive.

We fail to understand the danger to the powers of government of the several States which it is suggested must arise from sustaining the validity of the provisions of the act of Congress in question. On the contrary, we are of opinion that to deny the power asserted would be to depart from the text of the Constitution and to overthrow principles of interpretation which, as we have seen, have been settled since *McCulloch* v. *Maryland*, 4 Wheat. 316, and which in application have never been deviated from.

This conclusion remains unshaken despite an examination of the decided cases cited by the court below in its opinion or which were pressed upon our attention in argument, since in our judgment they all but express the general principles of interpretation which we have applied and which are decisive against the contention of want of power in Congress which was upheld below and is here insisted upon.

It follows that the judgment below was wrong. It must therefore be reversed and the case be remanded for further proceedings in conformity with this opinion.

And it is so ordered.

MR. JUSTICE PITNEY dissents.

UNITED STATES v. FERGER ET AL. (NO. 2).

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 777. Argued April 29, 1919.—Decided June 2, 1919.

Congress has power, under the commerce clause, to forbid and punish a conspiracy to forge and utter bills of lading for fictitious interstate shipments. *United States* v. *Ferger*, *ante*, 199.
256 Fed. Rep. 388, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Brown, with whom *Mr. Charles H. Weston* was on the brief, for the United States.

Mr. Charles E. Hughes, with whom *Mr. John C. Hermann* and *Mr. Sherman T. McPherson* were on the brief, for defendants in error.

Mr. Francis B. James, by leave of court, filed a brief on behalf of the National Industrial Traffic League, as *amicus curiæ*.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This case is disposed of by the ruling just announced in No. 776, *ante*, 199. The indictment here was for conspiring to do the various acts charged in the previous case, that is, the fraudulent fabrication and uttering of the same fictitious bills of lading and the obtaining of money thereon by delivering the same to the Second National Bank of Cincinnati as collateral. The demurrer which was sus-

tained by the court below in the previous case was also sustained as to this.

While there is a separate writ of error and a separate record in this case, it is conceded by all parties that the cases are in legal principle the same and that the decision of one concludes the other. It follows, therefore, that for the reasons stated in the previous case, No. 776, the judgment in this must be and it is reversed and the case remanded for further proceedings in conformity with this opinion.

And it is so ordered.

MR. JUSTICE PITNEY dissents.